



2026 INSC 437

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. _____ OF 2026
(Arising out of SLP (Crl.) No. 7786 of 2026)

PAWAN KHERA**Appellant****VERSUS****STATE OF ASSAM****Respondent****ORDER**

1) Dr. Abhishek Manu Singhvi, learned Senior counsel, appearing on behalf of the Appellant, and Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the Respondent-State, are *ad idem* that the matter may be heard on merits; therefore, it would be appropriate to finally dispose of this appeal.

2) Leave granted.

3) Assailing order dated 24.04.2026 passed by the High Court of Assam, Gauhati (*hereinafter, ‘Gauhati High Court’*) in Anticipatory Bail No. 804/2026, whereby the Gauhati High Court refused to grant anticipatory bail, the present Appeal has been

filed.

4) The Appellant has been made an accused in connection with FIR No. 04/2026 dated 06.04.2026 registered by the Crime Branch Police Station, Guwahati under Sections 175, 3(5), 3(6), 318, 336(4), 337, 338, 340, 341(1), 351(1), 352, 353, 356, and 61(2) of Bharatiya Nyaya Sanhita, 2023 (*hereinafter*, '**BNS**').

5) In the FIR, it is alleged that the Appellant, who is an office bearer of a national political party, addressed two press conferences on 05.04.2026, one at All India Congress Committee headquarters, New Delhi, and other at Hotel Lily, Gauhati. In the press conferences, the Appellant displayed certain documents on the stage with a large screen in the background, *inter alia*, stating that the complainant is the wife of the present Chief Minister of Assam and she holds three passports of (i) Egypt; (ii) United Arab Emirates; (iii) Antigua and Barbuda. He further stated that the documents shown on the screen exist as on date and have not expired. Showing some other documents in similar manner, it was also stated that the complainant has a company registered at Wyoming, USA with an investment of more than Rs. 50,000/- crores. She also owns and possesses certain assets and properties in Dubai and these facts have not been disclosed in the election

affidavit filed by the husband of the complainant.

6) The complainant while lodging FIR denied the veracity of all these documents and stated that they were fabricated using forged seals and QR codes. On the basis of these averments appropriate criminal action for the offences as indicated hereinabove has been sought. The press conferences allegedly was held on 05.04.2026 at about 6 p.m. in the evening and the FIR was registered at 12.49 a.m. in the intervening night of 05.04.2026 and 06.04.2026. After giving such statements the Appellant travelled to Delhi and later to Hyderabad.

7) On the next date, i.e., 07.04.2026, search and seizure proceedings were undertaken by the State through the police authorities at the residence of the Appellant in Delhi. Simultaneously, an application was also filed before the Chief Judicial Magistrate, Kamrup (M) seeking issuance of non-bailable warrant of arrest against the Appellant which was rejected on the same date, *inter alia* observing that the grounds urged were based on presumptions and conjectures without being supported by any material on record. It was also observed that the offences as alleged were cognizable and non-bailable, therefore, the IO has the authority to arrest the Appellant under Section 35 of the BNSS.

With these observations and in view of the guidelines laid down by this Court, the application seeking issuance of the non-bailable warrant was rejected.

8) In the *interregnum*, Appellant sought transit anticipatory bail before the Telangana High Court which was granted *vide* order dated 10.04.2026 in CRLP No. 5285 of 2026. Challenging the same, the State filed Special Leave Petition (Criminal) No. 6818 of 2026 before this Court, wherein initially *vide* order dated 15.04.2026, the operation of the order of the Telangana High Court was stayed. Subsequently, the Appellant filed I.A. No. 116724 of 2026 seeking vacation of the stay and the SLP (Crl.) as well as the I.A. were disposed of *vide* order dated 17.04.2026 granting liberty to the Appellant to file an application seeking anticipatory bail before the competent Court in Assam. It was also observed that upon filing such application it be decided uninfluenced by the observations made by the Telangana High Court in the order dated 10.04.2026 or by this Court while staying the said order. On filing the application seeking anticipatory bail before the Gauhati High Court, it was rejected *vide* impugned order dated 24.04.2026, giving rise to this Appeal.

9) Dr. Abhishek Manu Singhvi, learned Senior counsel

appearing for the Appellant submits that the press conferences were attended by him wherein in the background of the stage, on the screen, the alleged passports were exhibited by him with certain other documents. However, merely attending such press conferences and exhibition of the documents, as contended, would not *prima facie* make out a case under Sections 337 and 338 of the BNS. He further submits that the offences under Sections 175, 318, 336(4), 356, 340, 341(1), 351(1), 352 and 339 of BNS are bailable. It is only offences under Sections 337, 338 and 353 of BNS that are cognizable and non-bailable. So far as the offences under Section 3(5), 3(6) and 61(2) of BNS are concerned, they have to be read with the offences alongwith which these are invoked. Therefore, most of the offences as attracted in the present case are bailable. It is further urged that on the basis of the contents of the FIR, *prima facie*, offences under Sections 337, 338 and 339 of BNS cannot be made out. It is further contended that Section 353 of BNS deals with the statements conducing to public mischief, however, any statement made purely against an individual would not fall within the purview of such provision. It is not a case in which the Appellant has himself prepared false and fabricated documents. It is a case where the Appellant while addressing the

press conferences exhibited some documents and from the transcripts of the press conferences, it is quite clear that those documents were received from someone else. Therefore, *prima facie* offences are not made out. Dr. Singhvi, learned Senior counsel, also contends that those statements can, at best, be said to have been uttered for the purpose of gaining political edge having no intention or *mens rea* for commission of offence as allegedly projected. The Appellant is a resident of India and represents the Indian National Congress Party. He is a resident of Delhi and Hyderabad, so there cannot be any apprehension of flight risk or fleeing away or to influence or tamper with any documentary evidence which have already been exhibited and he is ready to co-operate in the investigation.

10) In addition, for canvassing apprehension of arrest, he has referred to various press notes and conferences held by the husband of the complainant on 06.04.2026, 07.04.2026 (three conferences), 08.04.2026, 09.04.2026, 11.04.2026 and 15.04.2026 which are available on digital and social media platforms. From perusal of those statements, it is apparent that in case the Appellant is not given protection, his personal liberty would be in jeopardy. Learned Senior counsel placing reliance on

the Constitution Bench judgment of this Court in ***Shri Gurbaksh Singh Sibbia and Others v. State of Punjab***¹ and a recent judgment in ***Pradip N. Sharma v. State of Gujarat and Another***² submits that when an offence is based on documentary evidence, insistence for custodial interrogation does not appear to be necessary and as flight risk of the accused is not there, the Court may grant the anticipatory bail.

11) *Per Contra*, learned Solicitor General Mr. Tushar Mehta, vehemently opposing the prayer, submits that, with respect to allegations as raised in the FIR, investigation has already begun and the documents which were exhibited by the Appellant in the press conferences have been found to be forged. Therefore, *prima facie* offences under Sections 337 and 338 of BNS are made out. It is also urged that during the time when the press conferences were being organized, legislative assembly elections were ensuing in the State of Assam. Viewed in this context, giving such statements would amount to public mischief and cannot be said to be confined to a certain individual i.e., complainant. He further contends that the FIR was registered on 06.04.2026 and since then the Appellant

¹ (1980) 2 SCC 565

² 2025 SCC OnLine 457

is not traceable. In fact, he is occasionally giving press releases on social media stating that he is not absconding, which is not enough to establish his co-operation with the investigation. In case if the appellant really intended to co-operate in the investigation, then rather giving social media press notes, he would have appeared before the police station as and when required and co-operated. Therefore, he urges that this is not a case wherein the benefit of anticipatory bail may be granted. In support of his contention, compilation of some judgments has been supplied to us across the Bar, however reliance has been mainly placed on judgment of this Court in ***Maruti Nivrutti Navale v. State of Maharashtra***³ to contend that where the documents have been fabricated and where custodial interrogation is necessary in such cases, the grant of anticipatory bail is not justified. In addition, while referring to Section 2(31) of the BNS, he further contends that passport falls within the definition of valuable security; and if the act of the Appellant is considered where he has exhibited forged passport of the complainant in the press conference, it is a serious offence. Therefore, in connection with the passport, it would be essential to find out as to how and in what manner this passport has been

³ (2012) 9 SCC 235

received by him, which essentially has been found to be forged during investigation. It is a matter of investigation and custodial interrogation, to unearth all those who are involved in the forgery of passport or from whom such passport could have been received by the Appellant is necessary. Hence, for all these purposes, the custodial interrogation in the matter may be essential. In view of the said submission, it is urged that the order passed by the High Court refusing to grant anticipatory bail does not warrant any interference.

12) Having considered the submissions as advanced and after perusal of the order under challenge, it is clear that the High Court has mainly based its decision on the fact that the alleged documents in question as exhibited by the Appellant have been found forged by the police and it is not the case of Appellant that the claim of the prosecution is fabricated or he has been falsely implicated. Although the offence under Section 339 of the BNS is not mentioned in the FIR, however, on the statement of the learned Advocate General, impugned order records that the case of the Appellant may fall under Section 339 of BNS. It was further observed that the complainant is not in politics, but her husband is in politics who is the Chief Minister of Assam. In case the

Appellant had made accusations against the husband of the complainant who is the Chief Minister of the State, such an act could have been said to be politically motivated. However, in the present case, the Appellant has raised allegations with respect to the complainant, which cannot be said to be politically driven.

13) It is further observed in the impugned order that the Appellant has not proved beyond doubt that the complainant has passports of three countries and she owns companies as alleged in the press conference. In the said conspectus, the Court opined that it is not merely a case of simpliciter defamation but *prima facie* an offence under Section 339 of BNS, for which custodial interrogation may be required.

14) Before adverting to the rival contentions of the parties and the findings as recorded by the Gauhati High Court, it is imperative to refer to the Constitution Bench judgment of this Court in the case of **Gurbaksh Singh Sibbia** (supra), wherein this Court observed as thus:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents

of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh [AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216] , which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail."

15) From the above, it is clear that in case accusations as alleged do not reflect any motive to secure ends of justice, but reflect an ulterior motive and object to cause injury or to humiliate the applicant, which is discernable, the direction to release in the event of arrest has to be ordered usually. On the contrary, if the Court

finds that on the basis of the antecedents and with an intent to take advantage of the order of the anticipatory bail, the accused wishes to evade from the clutches of law, the said order would not be made. Conversely, this Court observed that it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless proposed accusation appears to be actuated by mala fides. Equally, the absence of any likelihood of the applicant absconding does not, by itself, mandate the grant of anticipatory bail. The Court emphasized that several other relevant considerations must guide the exercise of judicial discretion while deciding whether to grant or refuse anticipatory bail. The nature of the seriousness of the proposed charges, context of the events, the possibility of tampering and influencing witnesses and evidence, the larger interest of the public or the State are some of the considerations which the Court has to keep in mind while deciding such application.

16) In the recent judgment in the case of **Pradip N. Sharma** (supra), this Court in para 18 has observed as under:

“18. However, considering the nature of the allegations and the fact that the matter is to be investigated primarily based on documentary evidence, the Court is inclined to grant the relief of anticipatory bail to the appellant. The offences alleged pertain to the exercise of administrative discretion

*in the passing of an order rather than direct physical involvement in any overt criminal act requiring custodial interrogation. The prosecution has not demonstrated any necessity for the custodial interrogation of the appellant beyond scrutiny of official records, which can be done without placing him in detention. Additionally, the appellant has expressed his willingness to cooperate with the investigation, and no material has been placed before this Court to suggest that he has evaded or obstructed the investigation in any manner. **Furthermore, it is well-settled that anticipatory bail can be granted where custodial interrogation is not essential, particularly in cases where the allegations hinge on official records and the presence of the accused can be secured without pre-trial detention. The Court also takes note of the fact that the FIR in question is part of a series of similar allegations against the appellant, and in the absence of any concrete material indicating a likelihood of tampering with evidence or influencing witnesses, the grant of anticipatory bail is justified. Accordingly, while the appellant shall cooperate with the investigation as and when required, he shall not be taken into custody, subject to conditions imposed hereinafter to ensure his participation in the inquiry process.***

(emphasis supplied)

17) Learned Solicitor General has placed reliance on the case of **Maruti Nivrutti Navale** (supra), in particular para 16, 17 and 18.

For ready reference, it is also reproduced as under:

“16. As observed above, all the three counsel appearing for the parties took us through MoUs, lease deed and other correspondence/communications with the educational authorities as well as the report of the Deputy Collector, Pune, to the Senior Police Inspector, Bundgarden Police Station, Pune. It is also relevant to point out that all these materials were scrutinised/analysed by the Additional Sessions Judge, Pune and the High Court while considering the application for anticipatory bail. It is true that the parties

have also approached the civil court for various reliefs. At the same time, as pointed out by the counsel for the State and the second respondent complainant, considering the seriousness relating to corrections/additions/alterations made in various documents, information furnished to the educational authorities which, according to them, are incorrect, we are of the view that in order to bring out all the material information and documents, custodial interrogation is required, more particularly, to ascertain in respect of the documents which were alleged to have been forged and fabricated. In the said documents and other materials which are in the possession of the appellant and the allegation against him that he has made false representation before the public authority on the basis of those documents for obtaining necessary permission, as pointed out by the State, in order to secure possession of those documents, custodial interrogation is necessary. For this reason, the Additional Sessions Judge and the High Court rejected the claim for anticipatory bail.

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18. In the light of the above discussion and in view of the mandate prescribed in Section 438 of the Code, we fully agree with the conclusion arrived at by the Additional Sessions Judge and the High Court in rejecting the relief of anticipatory bail. Consequently, the appeal fails and the same is dismissed.”

18) In the said case, the dispute was between Pawan Gandhi Charity Trust and Sinhgad Technical Education Society. After an interim 35-month lease expired in 2011, the Trust issued a notice for the Society to vacate the premises. The Society refused, prompting the Trust to file a criminal complaint alleging that the appellant forged an 87-year lease deed, altered original notarized documents, and submitted false information to the Education Department to unlawfully retain control of the property. Given the

severity of these forgery allegations and the need to recover the fabricated documents, the courts, including this Court, denied the appellant's request for anticipatory bail, ruling that custodial interrogation was absolutely necessary.

19) In the wake of the observations of the Constitution Bench in ***Gurbaksh Singh Sibbia*** (supra), in the matter of grant of anticipatory bail and in the facts of the present case, it is required to be examined whether the discretion of grant of anticipatory bail ought to be exercised by this Court and whether the High Court was justified in refusing to grant anticipatory bail.

20) In the facts of this case, it cannot be disputed that in the State of Assam the assembly elections were in progress and the polling of votes was scheduled for 09.04.2026. The incident as alleged in the FIR occurred on 06.04.2026 which is prior to the conclusion of the election campaign. The Appellant being the representative of a national political party organized a press conference making some allegations against the complainant, who is the wife of the Chief Minister of the State. While doing so, three passports were displayed by the Appellant alleging that the complainant is having passports of three countries, out of which, two are of Muslim countries, however, complainant's husband's politics is based on

hatred against the Muslim community in the State. In addition, it was further stated by the Appellant that in the election affidavit furnished by the husband of the complainant, the details of the companies and properties owned by his wife has not been disclosed.

21) It is the case of the prosecution that upon investigation it has been found that the passports purported to be belonging to the complainant are fake and has been displayed by the Appellant to defame the wife of the Chief Minister, intentionally causing harm to their reputation and for this purpose, the press conference was organized. At the same time, it is true that the documents which have been exhibited by the Appellant are in custody of prosecution and they have made some preliminary investigation thereon. However, it primarily appears that merely to gain some political momentum in favour of his party, this statement has been made by the Appellant. *Albeit*, we cannot lose sight of the fact that the Chief Minister of the State, who is also husband of the complainant, has made certain unparliamentary remarks against the Appellant in various press statements which have been filed before this Court *vide* annexure P/5.

22) To cite a few, complainant's husband on 07.04.2026 stated:

*“...This election will certainly proceed as planned, **but I am going to take further action-which I will reveal later-to turn Pawan Khera into “Pawan Peda”, wait for a few days.**”*

He has further stated on 07.04.2026 that:

“He has fled now, hasn’t he? He ran away from Guwahati as early as 6 AM yesterday morning. I just learned from our contacts in Delhi-via newspaper reports-that when the police went to Delhi, he had already fled all the way to Hyderabad.”

On being put a question:

“Ques: You had used certain words regarding him”

He answered:

“Ans: Well, that is just election rhetoric.”

On the same date, he gave another statement:

“Who is this Pawan Khera? Even if he hides in the hell, I will drag him out.”

He further stated on 08.04.2026 that:

“No, well-first I’ll go after Khera and knock him out (Khera ko pelunga); then, if other names comes up during the investigation, I’ll make the others pay the price (Baaki ko peda banaunga).”

Then on 11.04.2026, it was stated:

*“Regarding the police-the Model Code of Conduct (MCC) is currently in force. **Had I been exercising the full authority of the Chief Minister’s office-whereas today, in a sense, I am under the jurisdiction of the ECI-and had I been free to act without restrictions, I wouldn’t***

have sent just the Assam Police; I would have deployed the CRPF as well. But since I am not free to act unilaterally today, only the regular police were sent. As of today, I cannot exert any personal influence; the MCC is in effect. Had the MCC not been in force, Pawan Khera would never have been able to travel from Delhi to Hyderabad; I would have had him deplaned and brought back midway through his journey.

Reporter: He was actually saying, “I am sitting right here in Guwahati; stop me if you can-I challenge you.”

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CM – It is the police’s responsibility to conduct investigations. However, if the BJP forms the government, then Pawan Khera will spend the very last days of his life in an Assam jail.”

Notably, the verbal exchange did not end there and on 15.04.2026 while giving interview to one of the prominent Hindi news channels, following was stated:

“Himanta Biswa Sarma: We didn’t communicate. We didn’t update. But if I could do it, I would make Assam police accountable that how did this person go from Guwahati to Delhi? And how did he go from Delhi to Hyderabad? How did he go?

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Himanta Biswa Sarma: If on 4th May, if our government comes, then on 5th May, Commissioner of Police will be in my firing line.

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Himanta Biswa Sarma: At 12 o’ clock, I submitted an FIR. If you had to question prima facie, if you were convinced that FIR is genuine, at 12 o’ clock, the case was registered. At 6 o’ clock in the morning, Pawan Khera left Guwahati. That means Assam police let him go.

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Himanta Biswa Sarma: *I can't say anything. So I am more angry with the Assam police than Pawan Khera that how did this person go from Guwahati.*

Interviewer: *So if you come back as Chief Minister on 4th May, on 5th May, Commissioner of Police will be released.*

Himanta Biswa Sarma: *Then Commissioner police has to give me that explanation. When FIR was registered at 12 o'clock, at 6 o'clock in the morning, Pawan Khera left Guwahati. He landed at 9 o'clock. Even if he had gone, you should have caught him at Delhi airport. Then he went home. In the evening, he left for Hyderabad. How did he get such a gap?"*

23) After perusal of the aforesaid statements, we are of the view that the allegations and counter allegations have been made by the Appellant as well as by the husband of the complainant. Learned Solicitor General has not defended any of such statements during the course of hearing, nor is the veracity of the same questioned.

24) At this stage, we are cognizant of the fact that personal liberty of an individual enshrined under Article 21 of the Constitution of India cannot be put to jeopardy lightly. But at the same time, we are also of the view that for any offences as alleged in the FIR, the investigation should be completed with integrity and in full swing with co-operation of the Appellant.

25) Having regard to the aforesaid considerations, we are of the opinion that while adjudicating an application for anticipatory bail, a careful balance must be struck between the State's interest in

ensuring a fair investigation and the individual's fundamental right to personal liberty under Article 21 of the Constitution of India, in light of the principles enunciated in **Gurbaksh Singh Sibbia** (supra). In this context, the criminal process must be applied with objectivity and circumspection so as to ensure that individual liberty is not imperiled by proceedings that may be coloured by political rivalry. We are further of the opinion that the allegations and counter-allegations, as apparent in the present case, *prima facie*, appear to be politically motivated and seemingly influenced by such rivalry, rather than disclosing a situation warranting custodial interrogation, and the veracity of the allegations can be tested at trial. The right to personal liberty is a cherished fundamental right, and any deprivation thereof must be justified on a higher threshold, particularly where the surrounding circumstances may indicate the presence of political overtones.

26) Considering all these aspects as discussed above and in conspectus of the present case, we are of the view that the tests as enumerated for grant of anticipatory bail in **Gurbaksh Singh Sibbia** (supra) finds favour with the Appellant.

27) In our view, the observations as made by the High Court in the order impugned is not based on correct appreciation of all the

material which has been placed on record and appears to be erroneous, in particular shifting the burden on the accused. In addition, without alleging any offence under Section 339 of BNS and merely on the basis of statement made by the learned Advocate General, observations made regarding Section 339 of BNS do not appear to be correct. Accordingly, the present appeal stands allowed with following directions –

- a)** The Appellant is directed to be released on anticipatory bail in the event of his arrest in Crime Branch P.S. Case No. 04/2026 and on such reasonable terms and conditions which may be put by the Investigating Officer as deemed fit;
- b)** The Appellant is directed to co-operate in the investigation and to appear before the police station as and when required and intimated;
- c)** The Appellant shall not influence or tamper with any of the evidence during pendency of the investigation or trial;
- d)** Further, he shall not leave India without prior leave of the competent Court;
- e)** We further direct that if the trial Court deems it fit to impose some other conditions, it has the discretion to do the needful

and put those conditions during trial.

28) We further make it clear that the reference of the documents and the material made hereinabove is only for the purpose of consideration of grant of anticipatory bail and it has nothing to do with the merits of the criminal case. Therefore, the competent Court shall not be influenced by those observations and shall proceed in the matter in accordance with law.

29) Pending application(s), if any, shall stand disposed of.

....., J.
[J.K. MAHESHWARI]

....., J.
[ATUL S. CHANDURKAR]

**New Delhi;
April 30, 2026.**